89-1585

Supreme Court, U.S.
FILED
APR 31 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

MYRON CHERRY,

Petitioner,

-vs-

RICHARD LYNG, SECRETARY OF DEPARTMENT OF AGRICULTURE, et al.,

Respondents.

Petition for Writ of Certiorari
to the U.S. Court of Appeals
For the Tenth Circuit

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QUESTIONS

1. Did the lower courts, trial and appellate, erroneously deny the petitioner of his constitutional right to a jury trial?

2. Did the lower court erroneously usurp the duties of a jury in determining facts?

3. Did the lower court erroneously grant summary judgment, by determining disputed facts in favor of the movant for summary judgment?

4. Did the lower courts erroneously ignore issues raised in the petitioner's pleadings?

5. Did the lower court deny the petitioner of his "last chance" to file opposing affidavits to summary judgment?

6. Do three failed attempts at criminal prosecution by respondents against the petitioner, give the petitioner cause for action?

LIST OF ALL PARTIES - CASE NO. 88-1096

U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT

Plaintiff-Appellant

MYRON CHERRY

Defendants-Appellees

RICHARD LYNG, et al.[1]

[1]. RICHARD LYNG, Secretary of Agriculture; F.DALE ROBERTSON, GARY CARGILL, PAUL C. SWEETLAND, JOHN R. KIRKPATRICK, CHARLES HARDY, BERNARD WEINGARDT, RAYMOND BENTZEN, HARRY MOORE, PAUL PECK, ELAINE ZIEROTH and CHERI BASHOR, U.S. Forest Service;COUNTY OF LA PLATA, State of Colorado; CLAUDE DEERING, DORIS BRENNAN, and ROLLIN ROTH, La Plata County Commissioners; ALVIN BROWN, JAMES HARRINGTON, JR., and WILLIAM GARDNER, La Plata County Sheriff Department, VIC REICHMAN and JAMES MARTIN III, La Plata County District Attorney Department, and SCOTT TRINKLEIN.

TABLE OF CONTENTS

	page
QUESTIONS	1
LIST OF PARTIES	2
TABLE OF CONTENTS	3
TABLE OF AUTHORITIES	4
PETITION FOR WRIT	6
OPINIONS BELOW	6
JURISDICTION	7
CONSTITUTIONAL PROVISIONS & STATUTES	8
STATEMENT OF THE CASE	9
ARGUMENT	12
CONCLUSIONS	24
APPENDIX A	26
APPENDIX B	29
APPENDIX C	55
APPENDIX D	57
APPENDIX E	58
APPENDIX F	63
APPENDIX G	65

TABLE OF AUTHORITIES

	page
Adickes v. Kress, 398 US 144	15
Black v. Elkhorn, 163 US 445	19
Butz v. Economou, 438 US 478	20
Clipper v. Eli, 194 US 220,231	19
Giordano v. Lee, 403 US 931	15
Griffin v.Prince Edward Sch.377 US 218	20
Jacobson v. Maryland Gas,379 US 964	20
Moran v. Bench, 384 US 906	14,15
Pembaur v. Cincinnati, 475 US 469	16
Rizzo v. Goode, 423 US 362	16
St. Louis Min. v. Montana Min., 171 US 650	19
U. S. v. Diebold Inc., 369 US 654	12
Cameron v. Vancouver Ply. 266 F.2d 535	17
Deterjet v. United Acft.,211 F.Supp.348	14,15
Elliott v. Elliott, 49 F.R.D. 283	20
Higgs v. Douglas Co. Ct. 713 P.2d 840	20
McSurely v. McClellan, 697 F.2d 309	20
Montgomery v. Gerlinger, 304 P.2d 93	19
Rains v. Cascade, 258 F.Supp. 974	20
U. S. v. Etcheverry, 230 F.2d 194	19

PETITION FOR WRIT OF CERTIORARI

Petitioner prays that this honorable Court issue a Writ of Certiorari to review the judgment and order of the United States Court of Appeals for the Tenth Circuit, in this cause.

OPINIONS BELOW

Judgment and Order of appeals court affirming district court (October 31, 1989) is attached as APPENDIX A.

Judgment and Order of district court (November 23, 1987) is attached APPENDIX B.

Order of district court to correct caption (November 25, 1987) is attached as APPENDIX C.

Order of appeals court denying rehearing with oral argument (January 4, 1990) is attached as APPENDIX D.

JURISDICTION

Petitioner seeks review of Judgment and Order of the United States Appeals Court for the Tenth Circuit, dated October 31, 1989, (Civil Case No. 88-1096, Appendix A.) Petitioner's Petition for Rehearing With Oral Argument denied January 4, 1990, (Appendix D.)

The statutory basis for federal jurisdiction is Title 28 U.S.C. Sections 1331, 1332 (when filed in New Mexico), and 1343.

Jurisdiction of the United States Supreme Court is conferred by the United States Constitution, Article III, Sections 1 and 2 and United States Supreme Court Rules 10.1a and 10.1c.

CONSTITUTIONAL PROVISIONS & STATUTES

(Quotations in Appendix E) page

UNITED STATES CONSTITUTION

Article I Section 10 10

Amendment IV 10

Amendment VII 10,21

Amendment XIV Section 1 10

STATUTES

42 UNITED STATES CODE Section 1983 10

42 UNITED STATES CODE Section 1985 10

42 UNITED STATES CODE Section 1986 10

30 UNITED STATES CODE Section 21a 10,20

30 UNITED STATES CODE Section 26 10,20

16 UNITED STATES CODE Section 475 10,20

16 UNITED STATES CODE Section 478 10,20

16 UNITED STATES CODE Section 482 10,20

16 UNITED STATES CODE Section 528 10,20

16 UNITED STATES CODE Section 551 10,20

FEDERAL RULES OF CIVIL PROCEDURE,

Rule 56. Summary Judgment 11,13,14

Rule 53. Masters 22

STATEMENT OF THE CASE

The petitioner is the plaintiff in the lower court proceedings and the respondents are defendants.

This action stems from numerous acts by Forest Service employees against the petitioner and his mining activities (Amended Complaint), which acts culminated in the conspiracy of county officials with Forest Service employees to frame false criminal charges in county and state district court against the petitioner. (Deposition of James C. Martin,III, Exhibit 5, petitioner's Response to County Defendants' Motion for Summary Judgment, October 1987.)

After a series of three failed attempts at criminal prosecution (Exhibits, Amended Complaint,) by respondents against the petitioner, on June 12, 1986 the petitioner (pro se) filed a Complaint in the United States District Court, District of New Mexico, under 42 U.S.C. § 1983, 1985, and 1986. The case was subsequently transferred to the District

of Colorado on October 2, 1986, pursuant to 28 U.S.C. § 1406(a).

The Complaint and a later Amended Complaint (demand jury trial,) allege violations of petitioner's Constitutional and statutory rights, and ask for money damages and a mandamus type injunction prohibiting certain future acts by respondents against the petitioner. Petitioner's Amended Complaint and subsequent pleadings cite civil rights laws and other statutes (see CONSTITUTIONAL PROVISIONS & STATUTES) which forbid the respondents' activities against the petitioner or his mining operations. (Appendix E)

DISCOVERY

The limited discovery produced depositions and a few copies of a very interesting document, labeled the "Conspiracy Agreement" by the petitioner (Exhibits in Petitioner's Responses (to motions for summary judgment,) October 1987.) The "Conspiracy Agreement" is a written contract identifying certain county officers as agents of the Forest Service.

Petitioner alleges that the respondents, followed the "Conspiracy Agreement" to violate his constitutional and statutory rights.

SUMMARY JUDGMENT

Following premature cutoff of discovery, on October 1, 1987, the respondents moved for summary judgment, which was granted without trial or hearing by the district court in November 1987. Petitioner appealed and the appeals court affirmed district court's decision on October 31, 1989. The petitioner then petitioned for rehearing with oral argument, and rehearing was denied on January 4, 1990.

Petitioner's Notice of Appeal was served by first class prepaid mail on March 14, 1990, in accordance with Rule 10, Supreme Court Rules, as amended March 1, 1989.

ARGUMENT

(For ease of interpretation, the petitioner will refer to the "Addendum" in his "Appellants Brief" (filed February 1988) as simply "Addendum," and to his "Reply Brief of Plaintiff to all Defendants and Answer Brief of Plaintiff to Cross-Appeals" as simply "Reply," and his multiple "Response to Defendants' Motion for Summary Judgment" (October 1987) as simply "Response.")

The district court, with appeals court affirmance, diverted its attention to minor issues in the case, based its reasoning on selected minor issues, and ignored documented facts, statutes, and extensive case law favoring the petitioner, and court ignored several issues raised by the petitioner. The district court should have allowed as factual evidence petitioner's deposition (Exhibit, Cherry Deposition, in County Defendants' Motion for Summary Judgment, October 1, 1987), petitioner's pleadings, Exhibits in the Amended Complaint, and depositions in

the Petitioner's Response. (U.S. v. Diebold, 369 US 654) and (Rule 56(c)) (Issues raised in petitioner's Appellant's Brief, page 2, paragraphs 1 & 2. and Reply page 14.)

AFFIDAVITS

Furthermore, there was no hearing set (as implied in Rule 56(c) sentence 2, and (d) sentence 1), and the petitioner, as adverse party, was denied a last chance to serve opposing affidavits "prior to the day of hearing" since there was no hearing on the summary judgment question. (Issue raised in Appellant's Brief, page 1, Statement of the Case and Addendum, page 1, section II.)

The "declarations" in the respondents' Motions for summary judgment, actually establish disputed facts because they differ from the petitioner's submissions.

MISSTATEMENTS

The district court ignored the petitioner's deposition (Cherry Deposition,) and the Bianca deposition (Exhibit in petitioner's Responses (of October 1987) in misstating the

case in its November 23, 1987 Judgment, Section I.[2]

DISPUTED FACTS

In referring to Rule 56 (Federal Rules of Civil Procedure,) the district court,

(1) stated the proper elements as to disputed facts (page 3, Section II),

(2) recognized disputed facts and then,

(3) ruled on those disputed facts contrary to Rule 56, throughout its judgment of November 23, 1987.[3]

[2]. Issue raised in Addendum to Appellant's Brief, page 1, section "I"
page 1, sentence 1;
page 2, line 1;
page 2, line 3;
page 2, line 7;
page 2, paragraph 2;
page 2, last paragraph.

[3]. Issue of disputed facts raised in Appellants Brief,
page 2, topic 1.;
page 2, topic 2.;
Addendum to Appellant's Brief,
page 1, section I;
page 2, section II;
page 2, section A.1;
page 2, section A.2;
page 3, section A.3;
page 3, section A.4;
page 4, section C.
Adickes v. Kress, 398 US 144

SUMMARY JUDGMENT ON CONSPIRACY ALLEGATIONS

The district court, with appeals court affirmance, has declined to give a proper hearing to the petitioner's allegations of respondents' conspiracy. The existence of the "Conspiracy Agreement" and subsequent treatment of the petitioner in accordance with that agreement raise serious questions which the lower courts dismiss lightly.[4] In contrast, this Court has been emphatic and clear in its reluctance to allow the use of summary judgment against allegations of conspiracy.[5]

ISSUES IGNORED BY LOWER COURTS

Issues raised in the Amended Complaint, not heard by the district court and raised again in the petitioner's Reply are:

[4]. Issue raised in Addendum to Appellants brief;
page 2, section A.1;
page 3, section A.3;
page 3, section A.4;
page 3, section B;
page 4, section C.

[5]. Cases cited in petitioner's Reply:
Moran v. Bench, 384 US 906;
Deterjet v. United, 211 F. Supp. 348;

Whether or not federal respondents, lacked jurisdiction over petitioner's mining activities, abused their authority, met with Respondent Martin to conspire and prepare false charges against the petitioner, conspired with district attorney respondents to deprive the petitioner of his rights under the color of state law, interfered with petitioner's private business contracts, interfered with petitioner's mining activities, caused the petitioner mental stress and anguish, conspired to deny the petitioner of his statutory rights, and are liable for money damages to the petitioner.

Whether or not county and district attorney respondents, performed investigative acts outside the prosecutorial function and lost prosecutorial immunity, met with Forest Service personnel to conspire and prepare false charges against the petitioner, conspired with the federal respondents to deprive the petitioner of his rights under the color of state law, had a policy that unlaw-

fully worked against the rights of the petitioner (Pembaur v. Cincinnati, 475 US 469), are responsible under the "respondeat superior" theory (Rizzo v. Goode, 423 US 362) for policy and training, and are liable for money damages to the petitioner.

Whether or not sheriff respondents, were responsible for policy and training of Deputy Bianca, set the conditions for the false arrest of the petitioner on August 27, 1985, were responsible for change of department's policy which deprived the petitioner of equal protection and equal treatment of the laws, through the Cooperative Agreement had a policy that worked against the rights of the petitioner, conspired with federal respondents to deny the petitioner of his constitutional rights, and are liable for money damages to the petitioner.

Whether or not the petitioner is entitled to a mandamus type injunction against the respondents.

PRECEDENT CASES NOT FOLLOWED

The lower courts ignored extensive case law cautioning against use of summary judgment in cases such as this one. District court attributed a "more liberal use of summary judgment" to Anderson v. Creighton, Celotex v. Catrett, and Anderson v. Liberty Lobby, but those cases do not have the same elements as this one. This case involves allegations of conspiracy and calls for a trial by jury.[6] (Cited in the petitioner's Responses of October 1987, Issue raised in Appellant's Brief, February 1988)

OTHER HARASSMENTS

Due to premature cutoff of discovery, petitioner obtained and submitted only limited evidence in the way of depositions. Two unsubmitted depositions describe circumstances of Forest Service interference with possible business contracts of the petitioner, regarding use of the Parrott City Mill

[6]. Giordano v. Lee, 403 US 931
Moran v. Bench, 384 US 906
Deterjet v. United, 211 F.Supp.348

Sites with miners interested in erecting a mill to process their ore. (issue raised in petitioner's Reply, page 5.)

In further regard to the Parrott City Mill Sites, respondent Peck is using his new 36 C.F.R. 228 "LAW" in the tradition of respondents Bentzen, Weingardt, Zieroth, and Bashor. (See Appendix F.)

In regard to the disputed cabin, the disdain for due process continues. According to an official letter from respondent Peck, it has been "dismantled." (See Appendix G.)

The harassment continues.

JURISDICTION OF FOREST SERVICE

The Forest Service respondents have never established their jurisdiction over the petitioner or his mining activities, nor have they responded to the petitioner's allegations in the pleadings. (Response to Federal Defendants, October 1987) page 1, et sqq. and raised in Reply, "Federal Defendants" page 16.) The lower courts have not recognized the respondents' failure to answer petitioner's

allegations of jurisdiction, but instead have cited the non sequitur (U.S. v Weiss, 642 F.2d 296) case applying to surface mining.

The federal respondents have not responded to and the lower courts have refused to consider the petitioner's repeated references to case law and pertinent statutes forbidding Forest Service administration and management of mining activities[7] and statutes favoring the petitioner's mining activities. Furthermore, petitioner is entitled to injunctive relief against the federal respondents to prevent future unlawful interference with his mining activities, (Claim 1, Amended Complaint.)

[7]. 30 U.S.C. Section 21a
30 U.S.C. Section 26
16 U.S.C. Section 475
16 U.S.C. Section 478
16 U.S.C. Section 482
16 U.S.C. Section 528
16 U.S.C. Section 551
Cited in petitioners Reply:
Clipper v. Eli, 194 US 220
St.Louis Min. v. Montana Min., 171 US 650
Black v. Elkhorn, 163 US 445
U.S. v. Etcheverry, 230 F.2d 194
Montgomery v.Gerlinger, 304 P.2d 93

JURY TRIAL DENIED

The district court erroneously and arbitrarily decided that there was no conspiracy, usurping the duty of a jury to determine facts. This flies in the face of extensive case law [8] and constitutional guarantee. (Amendment VII) The district court's grant of immunity to respondents is another usurpation of the duties of a jury, in that the court determined disputed facts, and in favor of movants for summary judgment.

IMMUNITY

The issues of the various immunities of respondents have been raised by the petitioner in his Addendum and elaborated on in his Reply of May 1988.[9]

[8]. Issue raised and cited in petitioners Reply:
Cameron v. Vancouver, 266 F.2d 535
Jacobson v. Maryland Gas, 379 US 964
Rains v. Cascade, 258 F.Supp. 974
Elliott v. Elliott, 49 F.R.D. 283

[9].Reply Brief to All Defendants,May 88
page 4, all;
page 17, 18, 19, 26, 29 thru 33
Butz v. Economou, 438 US 478
Higgs v. Douglas Court, 713 P.2d 840

PRO SE PROBLEMS

If the petitioner's pleadings did not please the district court, the court could have appointed a special master (FRCP Rule 53) to help the pro se petitioner navigate the technicalities in the case. The district court made repeated admonitions that the petitioner hire an attorney,[10] but petitioner (not an indigent,) does not have the financial resources to hire an attorney for a case of this magnitude, and can only proceed as pro se.

In the interest of justice, the district court should have appointed a special master to whom the petitioner could refer for explanations of legal niceties and intricacies, to streamline the case for jury trial.

The deviations of the district court,

McSurely v. McClellan, 697 F.2d 309
Griffin v. School Bd, 12 L.Ed. 2d 256

[10]. Transcripts in Record on Appeal: Discovery/Scheduling, April 22, 1987, Pretrial Hearing, August 11, 1987, Status Hearing, October, 1987.

with appeals court affirmance, from settled law enumerated above, should be a matter of concern for this honorable Court. The district court's dismissal of conspiracy charges, granting summary judgment, denial of trial by jury, and the appeals court's affirmance, are serious matters that call for an exercise of this Court's power of supervision and settlement of these important questions of federal law.

CONCLUSIONS

Civil rights begin and end with the personal rights of the individual citizen. The "Bill of Rights" is a unique group of constitutional amendments designed to protect the individual citizen from the abuses of government, including the federal government. If the courts are to follow the Constitution, they must make every attempt to follow the spirit of the Bill of Rights as well as the letter of the law. The lower courts have failed in letter and spirit in this case.

"Sovereign Immunity" is a judicial construction without statutory basis, and being born of judicial invention, is susceptible to judicial abuse by unwarranted extension, also without statutory basis. Such judicial "activism," although an expedient tool in extending power of government officials, must have limits to prevent the creation of an elite that is above the law. Without limits, grasping officials, ever desirous of more authority and more power to

"do their job," will create an elitist government that is above the Constitution and laws of the United States. The lower courts have erroneously decided that the federal defendants and their agents are above the law in this case, and their orders further the creation of a federal police state.

It is within the duty and power of this honorable Court to remind the lower courts of their obligation to the Constitution and remand this case for jury trial.

FINALLY

The petitioner prays that this honorable Court will issue a Writ of Certiorari to the U.S. Court of Appeals for the Tenth Circuit, for review of this case, remand to district court for jury trial with a new Complaint and more discovery and instruct the courts to appoint a special master to guide this pro se petitioner.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

(Filed Oct 31, 1989)
(Robert Hoecker,Clerk)

MYRON CHERRY, Plaintiff-Appellant/ Cross-Appellee, v. COUNTY OF LA PLATA,State of CO; CLAUDE DEERING; DORIS BRENNAN and ROLAND ROTH, in their official capacity as La Plata County Commissionners; ALVIN BROWN; JAMES HARRINGTON, JR.; WILLIAM GARDNER; VIC REICHMAN; JAMES MARTIN,III, in their individual and official capacities, Defendants-Appellees/ Cross-Appellants, RICHARD LING, in his official capacity as Secretary of the U.S. Department of Agriculture; DALE ROBERTSON, in his official capacity as chief of the U.S. Forest Service; GARY CARGILL,in his official capacity as Regional Forester, Rocky Mountain Region, U.S. Forest Service; PAUL C. SWEETLAND; JOHN R. KIRKPATRICK; CHARLES HARDY; RAYMOND BENTZEN; PAUL PECK; HARRY MOORE; ELAINE ZIEROTH; BERNARD WEINGARDT; and CHERI BASHOR, each in their individual and official capacities, Defendants-Appellees.	No.88-1096 88-1109 & 88-1149 (D.C.No.86-F-2094) (D. Colo.)

ORDER AND JUDGMENT*[1]

Before McKAY, SEYMOUR, and TACHA, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cases are therefore ordered submitted without oral argument.

Plaintiff appeals from a district court order granting defendants' motions for summary judgment and dismissing this civil rights action. Defendants cross appeal from the district court's denial of their motions for attorney's fees under 42 U.S.C. § 1988.

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* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes or establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

We concur in the district court's determination on the merits, and, finding no abuse of discretion, see Supre v. Ricketts, 792 F.2d 958, 961 (10th Cir. 1986), affirm the court's denial of defendants' motions for attorney's fees as well.

The pending motion for substitution of counsel filed by defendants Brown, Harrington, and Gardner is GRANTED. The judgment of the United States District Court for the District of Colorado is AFFIRMED.

The mandates shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Action No. 86-F-2094
(Filed Nov. 23, 1987)
MYRON CHERRY, (James Manspeaker,Clerk)

Plaintiff,

v.

RICHARD LYNG, in his official capacity as Secretary of the U.S. Department of Agriculture; R. MAX PETERSON, in his official capacity as Chief of the U.S. Forest Service; GARY CARGILL, in his official capacity as Regional Forester, Rocky Mountain Region, United States Forest Service; PAUL C. SWEETLAND, JOHN R. KIRKPATRICK, CHARLES HARDY, RAYMOND PECK, AND CHERI BASHOR, each in their individual and official capacity; COUNTY OF LA PLATA, STATE OF COLORADO; CLAUDE DEERING, DORIS BRENNAN, AND ROLLIN ROTH, in their official capacity as La Plata County Commissioners; ALVIN BROWN, JAMES HARRINGTON, JR., WILLIAM GARDNER, VIC REICHMAN, JAMES MARTIN III, in their individual and official capacity,

Defendants.

ORDER

Sherman G. Finesilver, Chief Judge

This matter comes before the court on defendants' motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. After careful review of defendants' pleadings and attached exhibits

as well as plaintiff's timely responses, the court GRANTS defendants' motions for the reasons set forth below.

I.

Plaintiff's claims evolve largely from his arrest by La Plata County sheriff officials and federal officers on August 27, 1985, on property located in the San Juan National Forest. Plaintiff asserts that he was residing peacefully in a cabin on his "mining claim", the Mom Lode Claim, when the officers arrested him for felony menacing and criminal trespass. Plaintiff staked out an interest in this mining claim and a milling claim, the Parrott City Mill Site, both located in the San Juan National Forest. Plaintiff's mining claim is apparently valid. However, the parties dispute plaintiff's right to occupy a cabin located upon the land. According to the defendants, the federal government owns the cabin in fee simple. However, plaintiff claims the right to occupy the dwelling. The alleged harassing incidents

occurred when government authorities asserted their ownership interest in the cabin.

On August 27, 1985, two forest service employees were called to the cabin to investigate a neighbor's observation that plaintiff damaged federal property by tearing down a sign proclaiming that the cabin belonged to the government. Upon arriving at the cabin, defendants encountered plaintiff. Plaintiff fired a shot into the air to warn the rangers away from the cabin. They told plaintiff that he was trespassing on government property, but plaintiff refused to leave the cabin. The rangers then called for help from the La Plata County Sheriff's Department, and plaintiff was placed under arrest after he reached for his gun in the presence of the officers. Plaintiff claims he was unlawfully taken to the La Plata County Jail and that officials used unnecessary force to effect his arrest.

Plaintiff further alleges that, while incarcerated, his personal property and possessions were taken by La Plata County

officers and were unlawfully made available to unknown U.S. Forest Service personnel employed by the San Juan National Forest. Finally, plaintiff claims that the charges brought against by the La Plata County district attorney, which were subsequently dropped, were part of a pattern of harassment, threats, and intimidation designed to deter him from freely conducting his mining operations.

Plaintiff sues representatives of the United States Forest Service, nine federal officers, La Plata County, two La Plata County district attorneys, three La Plata County commissioners, and three persons from the La Plata County Sheriff's Department. He claims numerous violations of his civil rights, and his complaint states causes of action under 42 U.S.C. §§ 1983, 1985, and 1986. In addition to the allegations outlined above, plaintiff questions the authority of the Forest Service and its employees to manage plaintiff's mining activities. Mr.

Cherry seeks injunctive relief and money damages.

Plaintiff originally filed this action in the United states District court for the District of New Mexico on June 12, 1986. On October 2, 1986, the court transferred this case to the District of Colorado pursuant to defendants' motion to change venue. We have jurisdiction over the subject matter of this lawsuit pursuant to 42 U.S.C. § 1983.

II.

Summary judgment under Rule 56 of the Federal Rules of Civil Procedure must be granted if the pleadings, depositions, affidavits, and admissions on file show that there are no genuine issues of material fact and defendants are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Summary judgment assures the inexpensive and speedy determination of lawsuits where a party fails to make a showing sufficient to establish the existence of an element essenttial to that party's case. Once a prop-

erly supported summary judgment motion is filed, the opposing party may not rest on the allegations contained in his pleadings but must respond with specific facts, in affidavits or otherwise, showing the existence of a genuine factual issue to be tried. Wren v. Heckler, 744 F.2d 86 (10th Cir. 1984). In reviewing a motion for summary judgment, we must view the evidence in the light most favorable to the party opposing the motion. Wheeler v. Hurdman, 825 F.2d 257, 260 (10th Cir. 1987). Recently, the Supreme Court sanctioned more liberal use of summary judgment. See Anderson v. Creighton, 107 S.Ct. 3034, 3042 n.6 (1987); Celotex Corp. v. Catrett, 106 S. Ct. 2548 (1986); Anderson v. Liberty Lobby, 106 S.Ct. 2505 (1986).

A. County defendants motion for summary judgment

Defendants County of La Plata, State of Colorado, Claude Deering, Doris Brennan, Rollin Roth, Vic Reichman, and James C. Martin, III, filed their motion for summary

judgment on October 1, 1987. Plaintiff's amended comnplaint asserts causes of action against these defendants pursuant to 42 U.S.C ß ß 1983, 1985, and 1986. Defendants Deering, Brennan, and Roth were sued in their official capacities only, while defendants Reichman and Martin were sued in both their official and individual capacities.

1. Defendant county of La Plata

Municipal liability under 42 U.S.C. ß 1983 cannot be imposed unless plaintiff alleges that his injuries were inflicted pursuant to a governmental policy or custom. Monell v. New kYork City Dept. of Social Services, 436 U.S. 658, 694 (1978). The facts set before the court do not establish the existence of an unconstitutional custom, practice, or policy invoked by the County of La Plata. Proof of a single instance of unconstitutional activity is insufficient to impose civil rights liability on the municipality under the Monell rule unless plaintiff can also prove the incident was caused by an

existing unconstitutional policy. City of Oklahoma City v. Tuttle, 105 S. Ct. 2427 (1985). Plaintiff contends that either the single act of his arrest or the act of District Attorney Reichman's addition of count one to the criminal indictment against him constitutes an act by a county policymaker sufficient to establish the existence of an unconstitutional custom or practice. We disagree. There are simply no facts presented in this case to support Mr. Cherry's contention that any of the individuals involved in plaintiff's arrest and subsequent charging were acting pursuant to an unconstitutional county custom, policy, or practice. The County of La Plata is therefore entitled to summary judgment in its favor on the section 1983 claims brought against it by plaintiff.

2. Commissioners Deering, Brennan, and Roth

Plaintiff sued La Plata County Commissioners Deering, Brenna, and Roth in their

official capacities. He alleges that these defendants may have instructed a county employee, John Gray, to revoke his driveway permit. Defendants Deering, Brennan, and Roth supplied affidavits to the court affirmatively denying that they had conveyed any directions or instructions to any county employee concerning Mr. Cherry. Plaintiff did not refute these affidavits by presenting evidence to the contrary. Thus, the court finds that these defendants did not personally participate in any violation actionable under 42 U.S.C. § 1983. Defendants Deering, Brennan, and Martin are entitled to summary judgment on the claims against them. Bennett v. Passic, 545 F.2d 1260,1262 (10th Cir. 1976).

3. Defendants Reichman and Martin

Plaintiff sues defendants Reichman and Martin in their individual capacities and in their official capacities as district attorney and deputy district attorney for the Sixth Judicial District in the State of

Colorado. Plaintiff alleges that defendant Martin falsified facts to support the document charging plaintiff with menacing and criminal trespass, and plaintiff claims that Martin wrongfully interviewed the witnesses to the crimes prior to filing charges against him. Mr. Cherry sues defendant Reichman for rewriting the complaint originally drafted by defendant Martin and for failing to adequately supervise Martin.

The court believes that all of the actions allegedly taken by Deputy District Attorney Martin and District Attorney Reichman were within the scope of their respective duties as state prosecutors. Mr. Cherry failed to submit any evidence that either of the defendants acted in bad faith or acted outside the scope of their employment. Thus, plaintiff's claims against defendants Martin and Reichman under 42 U.S.C. § 1983 are absolutely barred by the doctrine of prosecutorial immunity. Imbler v. Pachtman, 424 U.S. 409,427 (1976); Coleman v. Turpen, 697

F.2d 1341,1344 (10th Cir. 1983). The defendants' motion for summary judgment on these claims is granted.

4. Plaintiff's section 1985 and 1986 claims

Plaintiff also alleges that all of the county defendants participated in a conspiracy to violate his constitutional rights. His complaint cites a violation of 42 U.S.C. § 1985(2). However, plaintiff fails to allege that any party defendant named in this case conspired to deprive him from testifying or attending any court action. The court therefore assumes that Mr. Cherry intended to state a claim under 42 U.S.C. § 1985(3).[2]

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2. Section 1985(3) prohibits two or more persons to conspire for the purpose of depriving, either directly of indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law. A civil conspiracy is a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong aginst or injury upon another.

In order to establish a cause of action under 42 U.S.C. § 1985(3), plaintiff must allege: (1) that defendants conspired; (2) for the purpose of depriving plaintiff of equal protection or equal privileges and immunitties under the law; (3) that one or more of the co-conspirators did or caused to be done an act in furtherance of the conspiracy; and (4) that, as a result, plaintiff incurred personal injury, injury to property, or was deprived of having and exercising a vital privilege of citizenship. Griffin v. Breckenridge, 403 U.S.88, 102-03 (1971). Plaintiff's complaint does not set forth facts sufficient to support a claim of conspiracy under section 1983. Cherry cannot establish an allegation of conspiracy merely by making the conslusory claim that the defendants conspired. Sooner Products Co. v. McBride, 708 F.2d 510,512 (10th Cir. 1983); Slotnick v. Garfinckle, 632 F.2d 163,165-66 (1st Cir. 1980). In addition, plaintiff

admitted in his deposition that the conspiracy he alleges was not motivated by a class-based animus. However, plaintiff must allege some racial or class-based discriminatory animus to support a claim of conspiracy under 42 U.S.C. § 1985(3). Silkwood v. Kerr-McGee Corp., 637 F.2d 743,748 (10th Cir. 1980). Mr. Cherry's response to these motions that he is a member of a class of miners which has suffered invidious discrimination does not persuade the court. Even if Mr. Cherry had properly pled these facts in his complaint, the court is satisfied that miners are not a statutorily protected class. Moreover, section 1985(3) does not apply to conspiracies motivated by an economic or commercial animus. United Brotherhood of Carpenters v. Scott, 463 U.S. 825,838-39 (1983). The court will dismiss these claims without prejudice for plaintiff's failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6).

A claim under section 1986 for failure

to prevent a known conspiracy must be predicated upon the existence of a conspiraacy under section 1985. Santistevan v. Loveridge, 732 F.2d 116,118 (10th Cir. 1984). Plaintiff's failure to allege a conspiracy under section 1985 warrants that this court dismiss his claims brought under section 1986 as well.

B. Sheriff's defendants motion for summary judgment

The sheriff's defendants, Alvin Brown, James Harrington, Jr., and William Gardner, filed their motion for summary judgment on October 1, 1987. Plaintiff alleges that these three defendants acted to deprive him of his civil rights by failing to investigate his complaints against neighboring property owners and by mishandling his arrest and subsequent confinement on criminal trespass and felony menacing charges. Mr. Cherry sets forth claims under section 1983. In addition, he alleges that these three defendants acted in concert with the La Plata County District

Attorney's office and conspired to deprive him of his constitutional rights. We discussed the insufficiency of plaintiff's conspiracy pleading under sections 1985 and 1986 above, and the court will dismiss plaintiff's conspiracy claims against these defendants as well.

The court also finds that the sheriff's defendants are entitled to summary judgment on the allegations brought against them pursuant to 42 U.S.C. § 1983. The defendants correctly assert that they are entitled to qualified immunity from liability on these claims. The doctrine of qualified immunity protects law enforcement officers who act reasonably under the law. The court's determination of whether qualified immunity applies will turn on the objective legal reasonableness of the officers' actions. Harlow v. Fitzgerald, 457 U.S. 800, 819 (1982). The court will not find that the defendants' actions are illegal unless the unlawfulness of their actions is apparent in light of

preexisting law. Anderson v. Creighton, 107 S.Ct. at 3042.

We find that the sheriff's defendants are protected form personal liability by qualified immunity, and the law entitles them to summary judgment. The affidavits proffered by Brown, Harrington, and Gardner demonstrate that they acted in good faith and with probable cause in all dealings with plaintiff. These defendants reasonably believed that their actions complied with established legal principles. Mr. Cherry does not refute the facts presented in defendants' affidavits. Moreover, plaintiff fails to allege any facts demonstrating that these defendants violated his constitutional rights. We therefore grant summary judgment in favor of defendants Brown, Harrington, and Gardner.

C. Federal defendants motion for summary judgment

Plaintiff's case against the federal defendants involves a conflict between the plaintiff, a miner and holder of an unpatent-

ed mining claim, and the United States Forest Service, the federal agency charged with regulating certain activities in the national forests. The parties contest the ownership of a cabin located on national forest land in the area of plaintiff's Mom Lode mining claim. The United States issued a special use permit to Mr. and Mrs. Oscar Hawkins, allowing them to occupy the cabin until Mr. Hawkins death, at which time the cabin would revert to the United States. Mr. Hawkins died in 1980. Within four months of his death, plaintiff modified his mining claim to include the land upon which the cabin is located. Since modifying his claim, Mr. Cherry or one of his employees has occupied the cabin intermittently.

The Forest Service asserts that Mr. Cherry is trespassing on United States property, while plaintiff contends that the modification of his mining claim to include the land underneath the cabin entitles him to occupy it. The Government points to reg-

ulations prohibiting a permanent structure on nonpatented mining claims. The Government's attempts to reclaim the cabin from plaintiff led to plaintiff's arrest by the La Plata County Sheriff's Department after he fired a shot in the vicinity of two Forest Service employees investigating plaintiff's destruction of its no trespassing sign.

The court finds that the federal defendants did not act to deprive plaintiff of his constitutional rights with respect to the Hawkins cabin. Plaintiff admitted in his deposition that the United States of America owns the cabin. (Plaintiff's deposition at 44,54,74). Although Mr. Cherry responds to these motions for summary judgment by attempting to change his answers, the court is persuaded that the defendants acted in good faith at all times in asserting the government's ownership of the cabin. Plaintiff received numerous warnings that his continued occupancy and use of the cabin constitut-

ed trespass on government property. Plaintiff's claims that the government illegally harassed him during his occupancy of the dwelling have no basis in fact or law.

Plaintiff also claims that the federal defendants have illegally prohibited plaintiff from conducting a milling operation on his Parrott City Mill Site. The government asserts that plaintiff has failed to adopt an operating plan and post a $2,000.00 restoration bond, as required by federal regulations. See 36 C.F.R. Part 228 et seq. Mr. Cherry questions the authority of the Forest Service to regulate his activities and asserts that any attempt by its employees to apply the regulations to him constitutes unlawful harassment.

Plaintiff sues defendants Richard Lyng, Secretary of the Department of Agriculture, R. Max Peterson, Chief of the U.S. Forest Service, and Gary Cargill, Regional Forester for the Rocky Mountain Region, in their official capacities in the federal government.

He contends that the Forest service does not have authority to regulate surface activity in the National Forest when that activity involves mining. We disagree. The Department of Agriculture, acting through the Forest Service, has the statutory authority to regulate surface mining in national forest areas, so long as those regulations are reasonable. See United States v. Weiss, 642 F.2d 296,298-99 (9th Cir. 1981) (presenting an extensive analysis of the statutory authority permitting the Department of Agriculture to adopt such regulations). Moreover, Forest Service regulations which require owners of unpatented mining claims located in national forest areas to file operating plans are valid. See United States v. Goldfield Deep Mines Co. of Nevada, 644 F.2d 1307 (9th Cir. 1981). The attempts by the Forest Service to enforce these regulations against Mr. Chery are presumptively legal and do not constitute harassment. Again, plaintiff fails to support his claims of illegal harassment with evid-

ence that the Forest Service acted in bad faith of outside the scope of reasonable regulatory authority in requiring that plaintiff file an operating plan and post a restoration bond prior to conducting mining activities. The defendants representing the Forest Service are entitled to summary judgment on plaintiff's claims with respect to the Parrott City Mill Site.

The individual federal defendants, Paul Sweetland, John Kirkpatrick, Paul Peck, Cheri Bashor, Elaine Zieroth, Bernard Weingardt, Harry Moore, Raymond Bentzen, and Charles Hardy, each submitted sworn affidavits to the court. These declarations describe and explain with great specificity each incident of contact the defendants had with plaintiff. The affidavits persuade the court that none of the individual defendants named in this complaint acted in bad faith or acted outside the scope of the authority granted to them under the law.

Moreover, we do not believe that these

defendants conspired to violate plaintiff's constitutional rights. The alleged "Conspiracy Agreement" referred to by plaintiff in his responses to these motions does not evidence a conspiracy between the United States Forest Service and La Plata County. Rather, the Cooperating Law Enforcement Agreement Joint Operating and Financial Plan merely sets forth an agreement between the Forest Service and the county regarding the need for and financing of law enforcement prevention and execution services requested by the Forest Service form the La Plata County Sheriff's Department.

Mr. Cherry failed to refute the facts set forth in the affidavits of the individual defendants. Plaintiff has not presented the court with any facts to support his claims that these defendants acted outside the scope of U.S. Forest Service policy or illegally applied the valid Forest Service regulations to him. He has presented no evidence to back his claims that these de-

fendants conspired to have him falsely arrested or acted to damage his reputation and cause him emotional distress. In the absence of evidence indicating a violation of clearly established law, the individual federal defendants are entitled to qualified immunity from liability. Harlow v. Fitzgerald, 457 U.S. 800 (1982). The court will enter summary judgment in their favor on all claims against them.

Accordingly, for the reasons set forth above, IT IS ORDERED:

1. Plaintiff's claims of conspiracy under 42 U.S.C. §§ 1985 and 1986 are DISMISSED WITHOUT PREJUDICE pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

2. Summary judgment enter in favor of the County of La Plata, State of Colorado, on all claims brought against it.

3. Summary judgment enter in favor of Claude Deering, Doris Brennan, and Rollin Roth on all claims brought against them.

4. Summary judgment enter in favor of Vic Reichman and James Martin,III, on all claims brought against them.

5. Summary judgment enter in favor of Alvin Brown, James Harrington, Jr., and William Gardner on all claims brought against them.

6. Summary judgment enter in favor of Paul C. Sweetland, John R. Kirkpatrick, Charles Hardy, Raymond Peck, and Cheri Bashor on all claims brought against them.

7. Summary judgment enter in favor of Richard Lyng, R. Max Peterson, and Gary Cargill on all claims brought against them.

The court further ORDERS that the complaint and cause of action be DISMISSED, each party to bear their own costs.

The clerk of the court is DIRECTED to enter the appropriate judgments.

Done this 23 day of November, 1987, in Denver, Colorado.

BY THE COURT:

Sherman G. Finesilver,Chief Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.86-F-2094
(Filed Nov. 23,1987)
MYRON CHERRY, (James Manspeaker, Clerk)

Plaintiff,

v.

RICHARD LYND, in his official capacity as Secretary of the U.S. Department of Agriculture; R. MAX PETERSON, in his official capacity as chief of the U.S. Forest Service; GARY CARGILL, in his official capacity as Regional Forester, Rocky Mountain Region, United States Forest Service; PAUL C. SWEETLAND, JOHN R. KIRKPATRICK, CHARLES HARDY, RAYMOND PECK, AND CHERI BASHOR, each in their individual and official capacity; COUNTY OF LA PLATA, STATE OF COLORADO; CLAUDE DEERING, DORIS BRENNAN, AND ROLLIN ROTH, in their official capacity as La Plata County Commissioners; ALVIN BROWN, JAMES HARRINGTON, JR., WILLIAM GARDNER, VIC REICHMAN, JAMES MARTIN III, in their individual and official capacity

Defendants.

JUDGMENT

Pursuant to and in accordance with the Order dated and signed November 23, 1987, by the Honorable Sherman G. Finesilver, District Judge, is

ORDERED AND ADJUDGED that judgment be entered in favor of the defendants and

against the plaintiff, each party to pay their own costs. It is

FURTHER ORDERED that the action and Complaint be and are hereby dismissed.

DATED at Denver, Colorado this 23rd day of November, 1987.

FOR THE COURT:

JAMES R. MANSPEAKER, CLERK

BY:_____

Stephen P. Ehrlich,

Chief Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Action No. 86-F-2094

(Filed Nov.25, 1987)

MYRON CHERRY, (James Manspeaker, Clerk)

Plaintiff,

v.

RICHARD LYNG, in his official capacity as Secretary of the U.S. Department of Agriculture; R. MAX PETERSON, in his official capacity as chief of the U.S. Forest Service; GARY CARGILL, in his official capacity as Regional Forester, Rocky Mountain Region, United States Forest Service; PAUL C. SWEETLAND, JOHN R. KIRKPATRICK, CHARLES HARDY, RAYMOND BENTZEN, PAUL PECK, HARRY MOORE, ELAINE ZIETROTH, BERNARD WEINGARDT, AND CHERI BASHOR, each in their individual and official capacity; COUNTY OF LA PLATA, STATE OF COLORADO; CLAUDE DEERING, DORIS BRENNAN, AND ROLLIN ROTH, in their official capacity as La Plata County Commissioners; ALVIN BROWN, JAMES HARRINGTON, JR., WILLIAM GARDNER, VIC REICHMAN, JAMES MARTIN III, in their individual and official capacity,

Defendants.

ORDER

Sherman G. Finesilver, Chief Judge

The court hereby amends its order, filed November 23, 1987, as follows. The caption shall be amended as set forth above. Paragraph 6 on page 14 shall now read:

6. Summary judgment enter in favor of

Paul C. Sweetland, John R. Kirkpatrick, Charles Hardy, Raymond Bentzen, Paul Peck, Harry Moore, Elaine Zieroth, Bernard Weingardt, and Cheri Bashor on all claims brought against them.

The clerk of the court is directed to enter an amended judgment as described above.

Done this 25th day of November, 1987, in Denver Colorado.

BY THE COURT:

Sherman G. Finesilver,Chief Judge
United States District Court

-1-

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MYRON CHERRY,	)	
	)	
Plaintiff-Appellant,	)	No.88-1096
	)	
v.	)	
	)	
COUNTY OF LA PLATA,State of Co, et al.,	)	
	)	
	)	
Defendants-Appellees	)	

ORDER
Filed January 4, 1990

Before McKAY, SEYMOUR and TACHA, Circuit Judges.

The captioned appeal comes on for consideration of appellant's petition for rehearing with oral argument.

Upon consideration whereof, appellant's petition for rehearing with oral argument is denied.

Entered for the Court

ROBERT L. HOECKER,CLERK

CONSTITUTIONAL PROVISIONS AND STATUTES:
UNITED STATES CONSTITUTION
Article I Section 10

"No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . "

Amendment IV

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . "

Amendment VII

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . "

Amendment XIV Section 1

" . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 UNITED STATES CODE SECTION 1983. Civil action for deprivation of rights

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or

causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or

immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . "

42 UNITED STATES CODE SECTION 1985. Ccnspiracy to interfere with civil rights

(2) " . . . or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State of Territory, with intent to deny any citizen the equal protection of the laws, . . . "

(3)" If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . .".

" . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

30 UNITED STATES CODE SECTION 21a. National mining and minerals policy; definition of minerals; execution of policy under other authorized programs; report to Congress

"The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, . . . "

"It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this section . . ."

30 UNITED STATES CODE SECTION 26. Locator's rights of possession and enjoyment

"The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, . . . shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, . . ."

16 UNITED STATES CODE SECTION 475. Purposes for which national forests may be established and administered

"All public lands designated and reserved prior to June 4, 1897, by the Presi-

dent of the United States under the provisions of section 471 of this title, . . . and all public lands that may hereafter be set aside and reserved as national forests under said section, shall be as far as practicable controlled and administered in accordance with the following provisions. . . . but it is not the purpose or intent of these provisions, or of said section, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes."

16 UNITED STATES CODE SECTION 478. Egress or ingress of actual settlers; prospecting

"Nothing in sections 473 to 478, 479 to 482 and 551 of this title shall be construed as . . . Nor shall anything in such sections prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof. . . ."

16 UNITED STATES CODE SECTION 482. Mineral lands; restoration to public domain; location and entry

" . . . And any mineral lands in any national forest which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions contained in sections 473 to 478, 479 to 482 and 551 of this title."

16 UNITED STATES CODE SECTION 528. Development and administration of renewable surface resources for multiple use and

sustained yield of products and services; Congressional declaration of policy and purpose.

"It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. . . Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests."

16 UNITED STATES CODE SECTION 551. Protection of national forests; rules and regulations

"The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests . . . and to preserve the forests thereon from destruction . . .

FEDERAL RULES OF CIVIL PROCEDURE,
Rule 56. Summary Judgment
"(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . ."

United States Department of Agriculture | Forest Service | San Juan National Forest | Mancos Ranger District

P.O. Box 330, 41595 E. Hwy 160
Mancos, Colorado 81328
303-533-7716

REPLY TO: 2810

DATE: March 19, 1990

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Myron Cherry
Box 4213
Las Cruces, New Mexico 88003

Dear Mr. Cherry:

There is not an approved plan of operations for your unpatented millsite claims located in La Plata Canyon (serial numbers 162403 - 162410, Foot, Graves, New York, Missunderstanding, Coin, Suzy, Hughes, Cat). As you are aware, an approved plan of operations is required by law for operations on unpatented mining and millsite claims on National Forest

land (36 C.F.R. 228.4). I have included a blank operating plan form for your convenience, if you wish to use it. This form is not mandatory; you may provide your own plan of operations.

To be considered for approval, a plan of operations must cover all reasonably foreseeable operations proposed for the claims, and must include the following information at a minimum:

1. Name and legal mailing address of operators, claimants, lessees, assigns, or designees;
2. A map or sketch showing the proposed area of operations, access roads, and the size and location of areas to be used or disturbed;
3. Description of the type of operations, proposed and existing road use and construction, means of transportation, period or timing of activity, and environmental protection measures.

In addition, a millsite claim must be located as (1) a mill site in connection with valid lode mining claim, (2) an independent mill site, or (3) a mill site in connection with valid placer claim. Please specify the nature of your millsite location.

If the proposed scope of operations warrants, I am authorized to require a reclamation bond prior to approval of your operating plan. The amount of any such bond will reflect the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations (36 C.F.R. 228.13).

Please submit your proposed plan of operations to this office within 30 days of receipt of this letter. If this is not possible, please notify me in writing as to the reason and when I may expect the proposed plan of operations.

Sincerely,

(Undecipherable)

Paul H. Peck

District Ranger

United States Department of Agriculture | Forest Service | San Juan National Forest | Mancos Ranger District

P.O. Box 330, 41595 E. Hwy 160
Mancos, Colorado 81328
303-533-7716

REPLY TO: 2810

DATE: December 20, 1990

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Myron Cherry
Box 4213
Las Cruces, New Mexico 88003

Dear Mr. Cherry:

On December 8, we dismantled the Hawkins Cabin near your "Mom Lode" mine. There were several items in the cabin that we thought might be yours, so we removed them for safekeeping before dismantling the cabin. The following is a list of those items from the cabin that are being stored at the Mancos Ranger District office.

2 units of a green sectional sofa

2 yellow vinyl kitchen chairs, one patched with duct tape

metal frame for twin bed

One box of kitchen items (cake pan, sauce pans, utensils, hot plate, etc.)

If these are yours, and you would like them back, please contact the Mancos District and make arrangements to pick them up before March 30, 1990.

Sincerely,

(s) Paul H. Peck

Paul H. Peck

District Ranger